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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 218 of 2000

RASIKLAL MANILAL PANDYA

Versus

HARISHKUMAR CHIMANLAL MODI

Appearance:

MR SURESH M SHAH for Petitioner

MR SANJAY A MEHTA for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of Order: 27/06/2000

ORAL ORDER

This revision application has been preferred against the order dated 10-2-2000 passed by the City Civil Court, Ahmedabad, whereby the application to restore possession of the suit premises has been rejected by the impugned order.

Civil Suit No. 3984/94 was decreed exparte on 31-3-1998. The Execution Petition for execution of the exparte decree was moved on 19-6-1998. The Court concerned passed the order appointing the Court Commissioner for taking possession on 20-6-1998. The possession of the suit premises was taken and the suit premises was locked by the Court Commissioner and the key thereof was handed over to the plaintiff. On the same day at about 10-30 p.m. the objection was raised and the Court concerned passed the order directing the plaintiff to hand over the key to the Court Commissioner. That order has already been complied with and the key of the suit premises is with the Court Commissioner. The respondent moved the application for setting aside the exparte order on 22-6-1998. Thereafter, by the order dated 27-9-1999 the exparte order was set aside. Later on, the application exh. 89 was moved by the defendant for restoration of the suit premises which was taken from the defendant in Execution Petition No. 287/99.

Heard learned counsel for the parties and perused

the relevant documents on the record.

Learned counsel for the petitioner contended that the exparte decree was set aside and in pursuance of the decree the possession of the suit premises was taken by the Court Commissioner and the Court Commissioner is in possession of the key of the suit premises. The learned counsel for the petitioner also contended that the Court below erred in not allowing the application filed by the defendant - petitioner and in not handing over the key of the suit premises to the defendant - petitioner. The petitioner is ready to comply with the orders which may be passed by this Court.

On the other hand, learned counsel for the respondent contended that the petitioner has not deposited the amount from the date on which the possession of the suit premises was taken i.e. on 1-7-1998. The amount was directed to be deposited by this Court in the Appeal from Order No. 252/97 and the Appeal from Order No. 217/97 by the order dated 29-7-1997 in connection with the application exh. 5.

In the facts and circumstances of this case, I think that the exparte decree has been set aside by the Court below and in pursuance of that order, the possession of the suit premises was taken over from the defendant - petitioner and as the decree has been set aside the possession of the suit premises should be restored to him on the condition that the petitioner will deposit the amount at the rate of Rs.2000/- p.m. with effect from 1-7-1998 till 30-6-2000 within a month preferably on or before 31-7-2000 and shall continue to deposit the amount of Rs.2000/- p.m. as per the order dated 29-7-1997.

The trial Court is directed to take away the key from the Court Commissioner and to hand over the same to the defendant - petitioner within a month from the date of production of a certified copy of this order. The petitioner shall also file an undertaking before the trial Court that in case he fails in the case he shall hand over the key of the suit premises to the Court concerned within two weeks after the decree is passed against him by the Superior Court. The key of the suit premises shall remain with the Court subject to the orders of any superior Court in case any remedy is available.

In view of the above directions, this Civil Revision Application stands disposed of.

Date:-27-6-2000 (Kundan Singh, J.)

/JVSatwara/